

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

EXPLORICA, INC.

Plaintiff,

v.

ELDERHOSTEL, INC.
d/b/a EXPLORITAS,

Defendant.

Civil Action No. 09-11719

DECLARATION OF OLLE A. OLSSON

I, Olle A. Olsson, under the penalties of perjury, hereby depose and state as follows:

1. I submit this declaration in support of Plaintiff Explorica, Inc.'s Motion for Preliminary Injunction in the above-captioned matter. This declaration is based on my personal knowledge and belief and on information made available to me by Explorica employees in connection with my position at the company.

2. I have worked in the educational travel industry for more than 35 years and I am the founder and Chief Executive Officer of Explorica, Inc. ("Explorica"), a Boston-based provider of educational travel services.

3. Prior to starting Explorica, I was President at EF Educational Tours for 14 years.

4. Explorica is a private company founded in 2000 that provides educational travel services from offices worldwide, including Boston, San Diego, Toronto, London, Merida (Mexico), and Nanjing (China). It is a market-leader among educational travel service providers with approximately 150 employees and millions of dollars in annual sales.

5. Explorica has used the distinctive service mark EXPLORICA (the “EXPLORICA Mark”) to identify itself and its services continuously since 2000. Explorica has invested tens of millions of dollars in promoting the EXPLORICA Mark through extensive advertising.

6. Over the past nine years, Explorica has provided educational travel services to over 155,000 customers.

7. Explorica is a full-service educational travel company. It offers hundreds of educational tour packages that it designs in-house to Europe, Asia, South America and elsewhere. The tours focus on experiential learning and are led by professional Tour Directors who are highly educated on the various sites visited on the trip. Explorica also acts as a one-stop shop for groups to reserve and book travel including, but not limited to, transfers, meals, lodging, and activities that correspond with the specific educational programs. Explorica has an affiliate that does business under the name “Explorica Travel.”

8. Due to the nature of its business, Explorica has agents and vendors throughout the world who provide critical services to it. These agent and vendor relationships allow Explorica to offer the highest quality tour experiences at the lowest prices and to quickly resolve any travel related issues that occur abroad including, but not limited to, errors in reservations and bookings or addressing emergency or safety concerns. A single customer who has a bad travel experience can cause Explorica to lose substantial business and suffer irreparable harm.

9. Explorica is sensitive to the needs of its customers to remain in contact with their families at home should an emergency or safety issue arise. Thus, Explorica makes an effort to provide family members with accurate contact information for travelers when requested.

10. Explorica utilizes technology to distinguish itself from its competitors with its unique trip features and social networking platform. For example, Explorica uses a website that connects

individuals within tours (through social-media applications such as Facebook and Twitter) and hosts its own branded on-line Tour Diary® application that permit parents and friends to follow a tour group's progress with narrative and pictures. Explorica's novel approach has been covered by the media and business partners:

- a. A true and correct copy of "Staying Connected," which appeared in *Newsweek* is attached hereto as Exhibit A.
- b. A true and correct copy of "Are they There Yet?," which appeared in *The Wall Street Journal* is attached hereto as Exhibit B.
- c. A true and correct copy of "Parents can follow school trips online at 'Explorica'" from *eSchool Newsonline* is attached hereto as Exhibit C.
- d. A true and correct copy of a Hand Spring Mobile Device Testimonial is attached hereto as Exhibit D.

11. Explorica has three principal customers: teachers, parents, and students. In many cases, Explorica provides its services to teachers as an initial point of contact. Typically, a teacher will choose Explorica as the educational travel organizer for a class trip and the parents and students will use Explorica to book and manage their participation in the trip. Essentially, the teacher is the initial decision maker who selects Explorica's services and the adult chaperones, parents, and students who sign up for the Explorica tour are the ultimate consumers of Explorica's services. Importantly, given the nature and cost of international travel, it is the parents, rather than the students, who are most involved in the actual purchasing decision.

12. Explorica's customers also include schools and their administrations insofar as it is often school officials who must approve student trips. Among the hundreds of colleges and universities with which Explorica has a relationship, many are also identified on the Elderhostel web site as Elderhostel partners in traditional Elderhostel program offerings, and/or in connection with the "Elderhostel Institute Network" ("EIN"). For instance, of the eighteen EIN

partners listed on the Elderhostel website for Massachusetts, Explorica has done business with at least seven.

13. Explorica also sells its educational travel services to parents and students directly, without an initial contact from a teacher.

14. While the focus of Explorica's services may be students and teachers, it also runs trips for groups comprised of primarily of adults. In the last nine years, Explorica has provided services to more than 43,000 adult travelers over the age of 21 and more than 14,000 adult travelers over the age of 50.

15. In the last nine years, Explorica has provided tours to groups comprised in substantial part or primarily of adults:

- a. 3,822 tour groups with over 25% of group over the age of 21;
- b. 1,046 tour groups with over 50% of group over the age of 21;
- c. 844 tour groups with over 25% of group over the age of 50; and
- d. 179 tour groups with over 50% of group over the age of 50.

16. Programs that currently or have in the recent past attracted significant interest from adult travelers include:

- a. **Explorica Family Tours:** Intergenerational trips designed to appeal to children, teens, parents, and grandparents. (A true and correct copy of a brochure for Explorica Family Tours is attached hereto at Ex. E);
- b. **Espiritour:** Religious-themed travel services purchased primarily by adults. (A true and correct copy of a brochure for Espiritour is attached hereto at Ex. F). A customer may initially use Espiritour's website as a point of contact, but all Espiritour customers are directed through Explorica's own EXPLORICA-branded web site for booking their travel arrangements.

17. Although it already offers its services to a significant number of adult travelers, Explorica plans to expand its focus on older adult travelers in the near future. Other traditionally student-

focused education travel companies—*e.g.*, EF, ACIS, and CHA—have already expanded their focus into this area.

18. Attached hereto as Exhibit G is a true and correct copy of a relevant excerpt from the Explorica Strategy Plan for 2008 – 2010 which was presented to the Board of Directors in April 2008 (prior to Elderhostel’s announcement of its rebranding to EXPLORITAS) and identifies “Seniors”, “Colleges and Universities”, and “Alumni” as targets for additional Explorica products.

19. In addition to customers who travel using Explorica’s services and rely on the distinctive EXPLORICA Marks to identify Explorica’s services, Explorica itself uses numerous vendors and agents who also rely on the distinctive EXPLORICA Marks to direct services to those customers. Explorica’s vendors include over 80 airlines, 2,000 hotels, 1,000 restaurants, 45 bus companies, 20 ferry & cruise lines, 250 Tour Directors, and 150 guides.

20. From a preliminary review of information publicly available on Elderhostel’s website, it can be determined that Explorica and Elderhostel provide tours in at least sixty common destinations (at least forty of which are international): Alaska; Arizona; California; Florida; Georgia; Hawaii; Illinois; Maryland; Massachusetts; Nevada; New York; Pennsylvania; South Carolina; Texas; Utah; Virginia; Washington; Washington D.C.; Puerto Rico; Quebec; Belize; Costa Rica; Mexico; Argentina; Brazil; Ecuador; Galapagos Islands; Peru; Austria; Belgium; Czech Republic; Denmark; England; France; Germany; Greece; Hungary; Ireland; Italy; Luxembourg; Poland; Portugal; Russia; Scotland; Spain; Sweden; Switzerland; Wales; Australia; New Zealand; Egypt; Morocco; South Africa; Cambodia; China; India; Japan; Thailand; Turkey; and Vietnam.

21. From a preliminary review of information publicly available on Elderhostel's website, it can be determined that both Explorica and Elderhostel have booked customers in at least fifteen of the same hotels: Lands in Love (San Lorenzo, Costa Rica); Country Inn & Suites (San Jose, Costa Rica); Hotel Arenal Paraiso (Arenal, Costa Rica); Hotel Punta Leona (Punta Leona, Costa Rica); Rancho Casa Grande (Manuel Antonio, Costa Rica); Hotel Balamoral (San Jose Costa Rica); The Imperial Hotel (Kerry, Ireland); The Park Inn (York, England); Novotel (Ottawa); Fairmont Chateau Frontenac (Quebec City) ; Chateau Laurier (Quebec City); Hotel Stanley (Athens, Greece); Novotel Amboise (Amboise, France); and Mercure Wien (Vienna, Austria).

22. From a preliminary review of information publicly available on Elderhostel's website, it can be determined that Explorica and Elderhostel have both used at least two of the same rail providers: VIA Rail (Canada) and SNCF (France). These are two of the largest rail operators in Canada and France respectively.

23. I am aware of at least two Tour Directors that have worked for both Explorica and Elderhostel on international tours.

24. I believe that Elderhostel and Explorica attend some of the same conferences and trade shows. I am personally aware of at least two instances that both Explorica and Elderhostel were in attendance at World Travel Market ("WTM") in London—an annual business to business travel-related trade show.

25. I am not aware of any other business offering educational travel services using a business name that contains the three-syllable root "explori." Running a Google search for "educational travel" results in a first page of results displaying no less than 18 different companies. Only two of these companies contains the "explori" root: Explorica and (now) Exploritas.

26. Elderhostel and Explorica are often listed or discussed together on the Internet in articles, blogs rolls, and web listings. Attached hereto as Exhibits H-L are true and correct copies of examples of such instances:

- a. Ex. H: Adventure Tour List
(http://adventuretourlist.com/Educational_Tours.html)
- b. Ex. I: "Learning Later, Living Greater" (<http://www.learninglater.com/travel.php>)
- c. Ex. J: Sample Blog Roll (<http://traveled.wordpress.com/2009/09/18/dr-kyi-may-kaung-interviewed-on-voice-of-america/>)
- d. Ex. K: Google Search results for "educational travel"
(<http://www.google.com/search?hl=en&source=hp&q=educational+travel&aq=f&oq=&aqi=g10>)
- e. Ex. L: ZoomInfo Search results for "educational travel"
(<http://www.zoominfo.com/Industries/travel-agency/travel-agencies-services/educational-travel.htm>)

27. I have known JoAnn Bell for more than four years. Ms. Bell is the Associate Vice President / International Program Development at Elderhostel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 3, 2009 in Boston, Massachusetts.



Olle A. Olsson